

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 27, 2011

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Comment Date on Sections XVII.A-K:	January 18, 2012
Reply Comment Date on Sections XVII.A-K:	February 17, 2012
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Reply Comment Date on Sections XVII.L-R:	March 30, 2012

By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement.

The entirety of this document may be found at the following URL:

http://fjallfoss.fcc.gov/edocs_public/Query.do?numberFld=11-161&numberFld2=&docket=&dateFld=&docTitleDesc=

As the original document is over 700 pages, the following pages, relevant to this matter, have been excerpted.

compensation between LECs and CMRS providers.²¹¹⁶ Indeed, in *Iowa Utilities Board*, the Eighth Circuit specifically upheld Commission rules regulating LEC-CMRS reciprocal compensation based on these provisions.²¹¹⁷

1002. In the *North County Order*, the Commission found that any decision to reverse course and regulate intrastate rates under section 20.11 at the federal level was more appropriately addressed in a general rulemaking proceeding.²¹¹⁸ Now that we are considering the issue in the context of this rulemaking proceeding, we find it appropriate to take this step for the reasons discussed above, and we conclude that our decision to establish a federal default pricing methodology for termination of LEC-CMRS intraMTA traffic as part of our broader effort in this proceeding to reform, modernize, and unify the intercarrier compensation system is consistent with our authority under the Act.

D. IntraMTA Rule

1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.²¹¹⁹ As noted above, this rule, referred to as the “intraMTA rule,” also governs the scope of traffic between LECs and CMRS providers that is subject to compensation under section 20.11(b). The *USF/ICC Transformation NPRM* sought comment, *inter alia*, on the proper interpretation of this rule.

1004. The record presents several issues regarding the scope and interpretation of the intraMTA rule. Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. We therefore take this opportunity to remove any ambiguity regarding the interpretation of the intraMTA rule.

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers “Common Carrier wireless exchange services to ESP and enterprise customers” in which the customer “connects wirelessly to Halo base stations in each MTA.”²¹²⁰ It further

²¹¹⁶ See *supra* para. 779.

²¹¹⁷ In *Iowa Utilities Board v. FCC*, the Eighth Circuit found that “[b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by [CMRS] providers . . . and because section 332(c)(1)(b) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers.” *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) (vacating the Commission’s pricing rules for lack of jurisdiction except for “the rules of special concern to CMRS providers” based in part upon the authority granted to the Commission in 47 U.S.C. § 332(c)(1)(B)). See also *Qwest v. FCC*, 252 F.3d 462, 465-66 (D.C. Cir. 2001) (describing the Eighth Circuit’s analysis of section 332(c)(1)(B) in *Iowa Utils. Bd. v. FCC* and concluding that an attempt to relitigate the issue was barred by the doctrine of issue preclusion). On this basis, the court upheld several rules relating to reciprocal compensation for LEC-CMRS traffic, including rules governing charges for intrastate traffic. For example, the court upheld on this basis the adoption of section 51.703(b) of our rules, which prohibits LECs from assessing charges on any other telecommunications carrier for non-access traffic that originates on the LEC’s network. 47 C.F.R. § 51.703(b).

²¹¹⁸ *North County Order*, 24 FCC Red at 14039-40, para. 10, 14042, para. 16 (internal quotations omitted).

²¹¹⁹ *Local Competition First Report and Order*, 11 FCC Red at 16014, para. 1036; 47 C.F.R. § 51.701(b)(2). The definition of an MTA can be found in section 24.202(a) of the Commission’s rules. 47 C.F.R. § 24.202(a).

²¹²⁰ Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 7; see also Halo Oct. 17, 2011 *Ex Parte* Letter. Halo is a nationwide licensee of non-exclusive spectrum in the 3650-3700 MHz band.

asserts that its “high volume” service is CMRS because “the customer connects to Halo’s base station using wireless equipment which is capable of operation while in motion.”²¹²¹ Halo argues that, for purposes of applying the intraMTA rule, “[t]he origination point for Halo traffic is the base station to which Halo’s customers connect wirelessly.”²¹²² On the other hand, ERTA claims that Halo’s traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers.²¹²³ NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used “in the middle,” this does not affect the categorization of the call for intercarrier compensation purposes.²¹²⁴ These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic.²¹²⁵ Responding to this dispute, CTIA asserts that “it is unclear whether the intraMTA rules would even apply in that case.”²¹²⁶

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules.²¹²⁷ Thus, we agree with NECA that the “re-origination” of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo’s contrary position.²¹²⁸

1007. In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC’s local calling area,²¹²⁹ the call is subject to access charges, not reciprocal compensation, even if the call originates and

²¹²¹ Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 8.

²¹²² *Id.* Attach. at 9.

²¹²³ ERTA July 8, 2011 *Ex Parte* Letter, at 3.

²¹²⁴ NTCA July 18, 2011 *Ex Parte* Letter at 7.

²¹²⁵ NTCA July 18, 2011 *Ex Parte* Letter at 1; ERTA *Ex Parte* Letter at 1, 3 (traffic from Halo includes “millions of minutes of intrastate access, interstate access, and CMRS traffic originated by customers of other companies;” one day study of Halo traffic showed traffic was originated by customers of “176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies”).

²¹²⁶ CTIA *August 3 PN* Comments at 9.

²¹²⁷ See *Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp.*, Order on Reconsideration, 17 FCC Rcd 6275, 6276 para. 4 (2002) (“Answer Indiana’s argument assumes that GTE North receives reciprocal compensation from the originating carrier, but our reciprocal compensation rules do not provide for such compensation to a transiting carrier.”); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177 n.70 (2000).

²¹²⁸ See NECA Sept. 23, 2011 *Ex Parte* Letter Attach. at 1; Halo Aug. 12, 2011 *Ex Parte* Letter at 9. We make no findings regarding whether any particular transiting services would in fact qualify as CMRS. See CTIA *August 3 PN* Comments at 9 & n.29 (“the information available does not reveal whether [Halo’s] offering is a mobile service”).

²¹²⁹ This occurs when the LEC and CMRS provider are “indirectly interconnected,” i.e. when there is a third carrier to which they both have direct connections, and which is then used as a conduit for the exchange of traffic between them.